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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of Sections 3(n) ) GN Docket No. 93-252  
and 332 of the Communications Act )  
 )  
Regulatory Treatment of )  
Mobile Services )

To: The Commission

COMMENTS OF GEOTEK INDUSTRIES, INC.

Geotek Industries, Inc. ("Geotek") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in GN Docket No. 93-252<sup>1</sup> proposing to adopt a framework for regulating mobile radio services pursuant to Sections 3(n) and 332 of the Communications Act as amended.<sup>2</sup>

STATEMENT OF INTEREST

Through its subsidiaries, Geotek holds authorizations and has agreements to manage facilities licensed to others in 36 of the 46 Designated Filing Areas ("DFAs")<sup>3</sup> in the 900 MHz frequency band of the Specialized

<sup>1</sup> Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, Notice of Proposed Rulemaking, GN Docket No. 93-252, FCC 93-454 (October 8, 1993).

<sup>2</sup> See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993) (amending 47 U.S.C. §§ 153(n), 332).

<sup>3</sup> DFAs largely approximate the boundaries of the Metropolitan Statistical  
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Mobile Radio ("SMR") service. As an SMR provider, Geotek has a direct interest in the regulatory treatment afforded mobile services to ensure that fleet operators and small users continue to have available to them mobile communications services tailored to meet their unique service demands at affordable costs. Geotek's comments in response to the NPRM are set forth below.

### BACKGROUND

The Commission has long recognized that a need exists for mobile services that are flexible and responsive to changes in the marketplace. In allocating spectrum for SMR, the Commission found that "private systems serve[d] vital needs" in the marketplace and adopted rules and established policies governing these services to encourage carriers to create individual arrangements for radio communications that take into account the specialized needs of individual users.<sup>4</sup> Although, in this rulemaking, the Commission must define which of these services should now be regulated as common carrier services, Geotek suggests that it not overlook the fact that a market continues to exist for SMR services that can be tailored to fit the needs of small businesses and end users and

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<sup>3</sup>(...continued)

Areas ("MSA") as defined by the Census Bureau. Although there are 50 urban centers, eight have been combined due to their close proximity.

<sup>4</sup> An Inquiry Relative to the Future Use of the 806-960 MHz Band and Amendment of the Rules Relative to Operations in the Land Mobile Services, Second Report and Order, 46 FCC 2d 752, 762 (1974) (subsequent history omitted).

that under relevant legal standards these offerings should remain private radio services.

**I. DISPATCH AND CUSTOMIZED COMMUNICATIONS SERVICES ARE TARGETED SERVICES AND NOT INTENDED FOR USE BY THE PUBLIC AT LARGE**

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Geotek recommends that the Commission adopt a flexible regulatory structure for classifying existing and new SMR services. The Statute divides mobile services into two categories, "commercial mobile services" and "private mobile services." A service is classified as commercial if it is offered for profit and makes interconnected service available to the public or a substantial portion of the public. Private services are those not classified as commercial or the functional equivalent of a commercial mobile service.<sup>5</sup>

Geotek supports a definition of private mobile services that recognizes that customized services are, by definition, offered to small or specialized user groups and therefore are not "available to the public" or its equivalent. It agrees with the Commission that the Statute and legislative history support a distinction between services offered to classes of users that are "effectively" available to the public and narrowly defined or customized services offered to a small or specialized class of users<sup>6</sup> and submits that incorporating such a distinc-

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<sup>5</sup> 47 U.S.C. § 332(d)

<sup>6</sup> See NPRM, at ¶ 25.

tion in the final rules reflects a market that currently exists for private SMR services.

The success of the current private SMR service market can be attributed in part to the ability of carriers to work with individual users to design service packages that satisfy specific communication needs. Small businesses such as some fleet dispatch operators often have unique communication requirements and need cost effective solutions that do not always include cellular-like services. Private SMR providers can work with these customers to design specific packages of services, which may in some cases require customized equipment or software, to satisfy that particular customer's needs. These service packages are not always intended to be widely available to the public. In fact, they sometimes are designed specifically for a single company in order for it to be more competitive in its own market. Although they may be interconnected with the public switched network, the interconnected portion may be only incidental to the primary service offered to that customer. These types of customized service applications should not be classified as an interconnected service offered to the public or its equivalent and should continue to be regulated as private.<sup>7</sup>

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<sup>7</sup> In this regard, the Commission has asked for comment on whether it should permit commercial mobile service carriers to provide dispatch. While Geotek believes that eventually similarly situated carriers should be treated equally, it recommends that the Commission continue the prohibition on the provision of dispatch by commercial mobile service providers during the three-year transition period. The Act and legislative history  
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II. INTERCONNECTED SERVICES THAT ARE INCIDENTAL TO  
PRIMARY SERVICES ARE NOT "FUNCTIONALLY EQUIVA-  
LENT" TO COMMERCIAL MOBILE SERVICES

A. The Act and Legislative History Support an Interpretation of  
Functional Equivalent that allows the Commission Flexi-  
bility in Classifying Private Mobile Services

Geotek agrees with the Commission's interpretation of the Statute that the "functional equivalent" test supports a separate independent criteria for classifying certain interconnected services as private. The NPRM provides two possible interpretations of the Statute for defining commercial and private mobile services. Under the first interpretation the Commission has some latitude in defining which services are classified as private. A service that satisfies the strict definition of a commercial mobile service might otherwise be classified as private if the Commission finds that it is not the functional equivalent of a commercial service.

Under the alternative interpretation the functional equivalent test would not enter into the analysis if the service met the literal definition of commercial mobile service. The Commission would only reach a conclusion on

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<sup>7</sup>(...continued)

specifically recognizes the need for a transition period for carriers that will be reclassified as commercial and Geotek submits that the continued prohibition during the transition period is consistent with Congress' intent. (See NPRM, at ¶ 3 n.3.) Further, Geotek reminds the Commission that the provision of dispatch by cellular carriers is an inefficient use of the spectrum and that the prohibition may be justified beyond the transition period.

the functional equivalency of a particular service after it determined that it did not fall within the definition of a commercial mobile service. Geotek submits that this latter interpretation is inconsistent with the legislative history of the Act.

The Statute defines private mobile services as any mobile service that is not a "commercial mobile service or the functional equivalent of a commercial mobile service . . . ." <sup>8</sup> The Conference Report provides that the functional equivalent test was added "to make clear that the term includes neither a commercial mobile service nor the functional equivalent" of a commercial service. <sup>9</sup> It then provides an example of how the functional equivalent test might operate.

The Commission may determine, for instance, that a mobile service offered to the public and interconnected with the public switched network is not the functional equivalent of a commercial mobile service if it . . . does not employ frequency or channel reuse . . . and does not make service available throughout . . . [a] wide geographic area. <sup>10</sup>

The example clearly anticipates that there are mobile services that fully meet the definition of a commercial service, but should be regulated as a private service. Geotek suggests that this interpretation gives the Commission discretion to determine the appropriate classification of any given service. If the functional

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<sup>8</sup> 47 U.S.C. § 332(d).

<sup>9</sup> Conference Report, at 29.

<sup>10</sup> Id.

equivalent test was meant to be limited to only those services that did not satisfy the commercial definition, than the example provided in the Conference Report would have no meaning.

B. "Interconnection" that is Incidental to the Primary Service Offered is not the Functional Equivalent of a Commercial Mobile Service

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The functional equivalency test should focus on whether the interconnected portion of the service is the "primary" service offered by the carrier or only "secondary" or incidental to the primary service. As a practical matter most SMR services involve some interconnection with the public switched telephone network. This does not mean, however, that the principle service offering is "telephony" or cellular-like service. On the contrary, the Commission has long recognized the distinction between primary and secondary or incidental services.<sup>11</sup> The test for determining "primary" versus "secondary" should be based on the percentage of interconnected traffic associated with a given service.

The Act specifically restricts the definition of commercial mobile services to "interconnected services"<sup>12</sup> and the legislative history clearly distinguishes between mere "physical" interconnection and an "interconnected ser-

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<sup>11</sup> See 47 C.F.R. § 22.308 (incidental communication services); 47 C.F.R. § 22.930 (auxiliary services).

<sup>12</sup> 47 U.S.C. § 332(d) (emphasis added).

vice."<sup>13</sup> Geotek submits that this distinction allows the Commission to adopt a threshold for determining when the traffic of the interconnected portion of a service reaches sufficient levels to be classified as an "interconnected service" under the Act. Geotek recommends that such a threshold should be established at 20%. Thus, when the interconnected traffic of a given service exceeds 20% of the overall traffic, the service should be classified as a commercial mobile service and regulated accordingly.

Moreover, not all interconnection is "functionally equivalent." Different carriers receive different interconnection to the public switched network. Some carriers have a very robust interconnection (e.g. cellular carriers are considered "co-carriers" with the local exchange carrier), whereas other carriers are only indirectly interconnected. Geotek submits that such indirect interconnection is not "functionally equivalent" to direct interconnection and recommends that indirectly connected services (e.g. through a PBX using business lines) should not be deemed providing an interconnected service as defined by the Act.

Finally, Geotek does not believe that defining services according to the geographic area served will assist the Commission in furthering the statutory objectives.<sup>14</sup> While such definitions may draw bright lines for classifying services, they remove incentives for private carriers to expand their service areas to

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<sup>13</sup> See Conference Report at 28-29; See also NPRM, at ¶¶ 14-16.

<sup>14</sup> See NPRM, at ¶¶ 28, 32.



meet demand within their markets for fear of being reclassified. In the 900 MHz rulemaking the Commission proposes to adopt a nationwide, regional and local licensing structure and to impose certain basic coverage requirements to ensure that licensees do not allow spectrum to lie fallow.<sup>15</sup> If the service operator is awarded one of these licenses, because it will be required to build out its system or lose its license, it would have no choice but to be classified as a commercial mobile service provider under a "geographic" definition even though the primary service offered may be private.

Thus, Geotek recommends that in determining which services will be classified as common carrier services, the Commission focus, not on whether the SMR system is a "wide-area" system or employs frequency reuse, but rather, on the primary service being provided and the functionality of the interconnection to the public switched network. Geotek suggests that by focusing on the service and not the geographic area the choice rests with the service provider to offer

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<sup>15</sup> First Report and Order and Further Notice of Proposed Rulemaking, PR Docket 89-533, 8 FCC Rcd. 1469, 1479 (1993). Geotek has filed comments and reply comments in PR Docket 89-533 which is currently pending before the Commission. The Commission seeks comment in the instant docket on the regulatory classification it should afford licensees of wide-area system if adopted in PR Docket 89-533. See NPRM, at ¶ 38. Consistent with its comments herein, Geotek submits that no single regulatory classification should be universally applied based on the geographic area served. Thus, if the Commission should determine to license such wide-area SMR systems, Geotek recommends that it allow the individual licensees to choose the services that best satisfy their particular markets and to be regulated consistent with the definitions adopted in this rulemaking.

services responsive to market forces. When those forces dictate service offerings akin to traditional telephone or cellular-like services or the interconnected traffic reaches sufficient levels that it is no longer incidental to the primary service, then the carrier can notify the Commission of a change in status with respect to that service and be regulated accordingly.<sup>16</sup> A flexible regulatory structure as Geotek suggests will allow continued innovation and technological development in the SMR frequency band.

#### CONCLUSION

For the foregoing reasons, the Commission's proposals discussed above should be adopted as modified in accordance with these Comments.

Respectfully Submitted,

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Dated: November 8, 1993

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<sup>16</sup> For existing services, prior to the expiration of the three-year transition period, carriers can certify their choice to the Commission and provide supporting documentation to justify their elected classification consistent with the definitions adopted in this rulemaking.